

**CITY MANAGER'S OFFICE
CITY OF COSTA MESA
INTEROFFICE MEMORANDUM**

TO: City Council/Board Members
FROM: Allan L. Roeder  City Manager
DATE: August 6, 2010
SUBJECT: *SPECIAL JOINT MEETING OF AUGUST 10, 2010*

Due to a shortage of timely items for the regular City Council Study Session scheduled for this date, the meeting was cancelled. There exists, however, the need for a Special Joint meeting of the City Council and the Orange County Fairgrounds Joint Powers Authority (JPA) regarding the real property negotiations involving the State of California and Facilities Management West (FMW) for property located at 88 Fair Drive. In light of the need for the Closed Session consultation with the City Council and the JPA and with the cancellation of the Study Session, the opportunity was available to update the public as to the status of these negotiations.

The focus of this memorandum is to provide an overview the agenda items to be addressed and to reference document location for members of the public. Presentations will be made on the various items listed under New Business on the agenda but there are no written staff reports beyond this summary.

Status Reports:

Purchase & Sales Agreement

A Purchase and Sales Agreement with the State of California was approved by the City Council/JPA at its meeting of June 22, 2010. That document is available on the City's website as an attachment to the agenda. City Attorney Kimberly Hall Barlow will provide an update as to the status of the Purchase and Sales Agreement including the various exhibits to the agreement.

Due Diligence

There is substantial due diligence required by the proposed operator – Facilities Management West with respect to both the physical and regulatory/legal condition of the OCF. This includes but is not limited to, seismic assessment of structures, Phase II Environmental Assessment and access and review of all "as built" construction drawings. Additionally, they are reviewing all agreements, contracts, litigation matters, settlement agreements, financial statements and related material. A representative of FMW has been invited to provide the City Council/JPA and the public a status report on these efforts.

Legislation

The passage of State legislation is required for the property to be sold to the City of Costa Mesa. A draft copy of that legislation has been prepared (see attached) and must be approved by a 2/3rds vote of the State Legislature and signed by the Governor in order for the purchase to be completed. City Manager Allan L. Roeder will provide a status report on the legislation.

Ground Lease

The Ground Lease is the legal document governing the business relationship and respective authorities between the Orange County Fairgrounds Joint Powers Authority and Facilities Management West. The basic terms of the lease are set forth in the approved Memorandum of Understanding (MOU) as approved by the JPA on June 22, 2010. A copy of the MOU is on the City's website as an attachment to the agenda. The Ground Lease will be a much fuller, more detailed definition of the business relationship between the two parties and is currently in draft form under review by the respective legal counsels. City Attorney Kimberly Hall Barlow will provide a status report.

Prospective Land Use regulation of the Orange County Fairgrounds

Because the Orange County Fairgrounds has been under State ownership, it has largely been exempt from any local land use regulation by the City of Costa Mesa. The proposed purchase of the site would change this in addition to the passage of Measure C by the voters of Costa Mesa. A presentation identifying the layers of regulation that will be applicable to the property as well as its operation will be presented by staff.

Orange County Fairgrounds JPA – Rights, Authorities and Responsibilities

The JPA was established by the City as the legal method allowing for the purchase of the property from the State of California. At the time of its inception there was discussion about the future role of the JPA, its composition, public participation and related governance issues. This item has been placed on the agenda as an opportunity for discussion as to the JPA and options going forward as to how it may choose to govern.

Closed Session

As noted at the inception, there is need for a Closed Session with the City Council/Board members for direction on negotiations with both the State of California and Facilities Management West for acquisition of 88 Fair Drive.

Attachment: Assembly Bill 1790

- c City Attorney
- Development Services Director
- City Clerk

AMENDMENTS TO ASSEMBLY BILL NO. 1790

Amendment 1

In line 1 of the title, strike out "repeal Sections 3884.1" and insert:

amend Sections 3884

Amendment 2

On page 2, before line 1, insert:

SECTION 1. The Legislature finds and declares the following:

(a) The sale of agricultural district real and personal property authorized by Section 3 of this act is in the best interest of the state.

(b) The sale of agricultural district real and personal property authorized by Section 3 of this act to the Orange County Fairgrounds Authority will be considered a sale at fair market value.

(c) The needs of the County of Orange which could otherwise be met by a district agricultural association will be accomplished by the Orange County Fairgrounds Authority operating, or causing to be operated, the Orange County Fair as authorized by this legislation.

SEC. 2. Section 3884 of the Food and Agricultural Code is amended to read:

3884. (a) District 32 is the County of Orange.

(b) This section shall become inoperative, and no district agricultural association shall exist in all or any portion of the County of Orange, as of the effective date of the close of escrow and transfer of title pursuant to the sale authorized by Section 3884.2, notice of which the Department of General Services shall post on its Internet Web site.

SEC. 3. Section 3884.2 of the Food and Agricultural Code is amended to read:

3884.2. (a) The District 32a Disposition Fund is hereby created in the State Treasury.

(b) The Department of General Services may sell all or any portion of the real property that composes District 32a, along with any personal property owned by the 32nd District Agricultural Association and the 32nd District Agricultural Association's right to operate the Orange County Fair, to the Orange County Fairgrounds Authority, a joint powers authority formed pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code and which includes the City of Costa Mesa as a member. The terms and conditions of the sale shall be satisfactory to the Director of General Services and may include seller financing, notes, or security, and the security for the notes. District 32a shall not enter into any contract, lease, or other agreement affecting the use or operation of the real property for a period that exceeds three months, and all of these contracts, leases, or other agreements shall contain a provision that they may be canceled upon a 30-day notice from the Department of General Services. The Department of General Services shall be reimbursed for any reasonable cost or expense incurred for the transactions described in this section. Additionally, to the extent bonds issued by the State Public Works Board or other entity involve the property to be sold pursuant to this section, all issuer and trustee-related



costs associated with the review of any proposed sale, together with the costs related to the defeasance or retirement of any bonds, which may include the cost of nationally recognized bond counsel, shall be paid from the proceeds of any sale or lease authorized by this section. The net proceeds from the sale shall be deposited into the District 32a Disposition Fund.

(e) The sale of the real property authorized by this section shall be pursuant to a public bidding process designed to obtain the highest, most certain return for the state from a responsible bidder, and any transaction based on such a bidding process shall be deemed to be the fair market value for the property. A notice of this bidding process shall be posted by the Department of General Services on its Internet Web site for at least 30 days prior to the sale of the real property. The provisions of Section 11011.1 of the Government Code are not applicable to the sale of real property authorized under this section.

(d) Thirty days prior to executing a transaction for a sale of real property authorized by this section, the Director of General Services shall report to the chairs of the fiscal committees of the Legislature all of the following:

- (1) The financial terms of the transaction.
- (2) A comparison of fair market value for the real property and the terms listed in paragraph (1).
- (3) Any basis for agreeing to terms and conditions other than fair market value.

(c) As to the real property sold pursuant to this section, the Director of General Services shall except and reserve to the state all mineral deposits, as defined in Section 6407 of the Public Resources Code, without a right to surface entry, together with the right to prospect for, mine, and remove the deposits. If, however, the Director of General Services determines that there is little or no potential for mineral deposits, the reservation may be without surface right of entry above a depth of 500 feet, or the rights to prospect for, mine, and remove the deposits shall be limited to those areas of the real property conveyed that the director determines to be reasonably necessary for the removal of the deposits.

(f) The Department of General Services shall report to the Legislature on or before June 30 of each year on the status of the sale of real property authorized by this section.

(g)
(d) Upon the sale of all property that composes District 32a, District 32a shall be abolished and all funds in the District 32a Disposition Fund shall be transferred to the General Fund.

(h) (1)
(e) The disposition of state real property or buildings sale specified in subdivision (b) that are shall be made on an "as is" basis and shall be exempt from Chapter 3 (commencing with Section 21100) to Chapter 6 (commencing with Section 21165), inclusive, of Division 13 of the Public Resources Code. Upon title to the parcel vesting in the purchaser or transferee of the property Orange County Fairgrounds Authority, the purchaser or transferee Orange County Fairgrounds Authority shall be subject to any local governmental land use entitlement approval requirements and to Chapter 3 (commencing with Section 21100) to Chapter 6 (commencing with Section 21165), inclusive, of Division 13 of the Public Resources Code.

~~(2) If the disposition of state real property or buildings specified in subdivision (b), is not made on an "as is" basis and close of escrow is contingent on the satisfaction of a local governmental land use entitlement approval requirement or compliance by the local government with Chapter 3 (commencing with Section 21100) to Chapter 6 (commencing with Section 21165), inclusive, of Division 13 of the Public Resources Code, the execution of the purchase and sale agreement or of the exchange agreement by all parties to the agreement shall be exempt from Chapter 3 (commencing with Section 21100) to Chapter 6 (commencing with Section 21165), inclusive, of Division 13 of the Public Resources Code.~~

~~(3) For the purposes of this subdivision, "disposition" means the sale, lease, or repurchase of state property or buildings specified in subdivision (b).~~

~~(4)~~

~~(f) The disposition of real property or buildings, or both, pursuant to this section does sale authorized by subdivision (b) shall not constitute a sale or other disposition of state surplus property within the meaning of Section 9 of Article III of the California Constitution and shall not be subject to subdivision (g) of Section 11011 of the Government Code.~~

~~(g) Neither the real property nor any leasehold interest therein subject to the sale authorized pursuant to subdivision (b) shall be subject to property taxes of any kind over and above those currently being paid on the real property or any leasehold interest therein, subject to increases pursuant to the California Constitution.~~

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to implement, as soon as possible, the sale authorized by this act of the Orange County Fair property and thereby allow the City of Costa Mesa through the Orange County Fairgrounds Authority to further the use and enjoyment of property within its jurisdiction, and exercise its police powers for the advancement and preservation of the quality of life in the County of Orange, and to implement, as soon as possible, the sale authorized by this act in order that funds received from the sale may be promptly made available for other essential state funding, it is necessary that this act take effect immediately.

Amendment 3

On page 2, strike out lines 1 to 38, inclusive, and strike out pages 3 and 4